# Yeow Boon Kee v Timbalan Menteri Dalam Negeri Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO 44-32-92
LC VOHRAH J
22 APRIL 1993

***Constitutional Law*** *— Preventive detention — Whether report of police officer to detain accused for more than 14 days should be addressed to the Inspector-General of Police or designated officer only — Application for habeas corpus — Whether s 3(2)(c) of the Dangerous Drugs (Special Preventive Measures) Act 1985 had been infringed — Dangerous Drugs (Special Preventive Measures) Act 1985 s 3(2)(c)*

***Evidence*** *— Trial — Admissibility of certified true copy of report in evidence when maker not available — Whether it was a public document — Evidence Act 1950 ss 65 & 74(a)(iii)*

The applicant was detained under the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') and applied for a writ of habeas corpus. The only two issues raised in this application were, firstly whether the provisions of s 3(2)(c) of the Act had been infringed by the fact that the report under the said section was addressed to the Inspector-General of Police and not the designated officer. Therefore, there was non-compliance with the said section as more than one mind had been applied to the report. Secondly, whether the said report was admissible in evidence as only a certified true copy was tendered by the designated officer. This was due to the fact that the maker of the report was overseas at the time and could not tender the report himself.

**Held**, dismissing the application:

(1) The true construction of s 3(2)(c) of the Act should be whether the designated officer received and applied his mind to the report. There was nothing in the provisions to suggest that the report must be addressed specifically to the designated officer. It is only a general administrative practice in government departments for correspondence to be addressed to the head of department and not to the officer concerned. The court was therefore satisfied that there has been compliance with the provisions of s 3(2)(c) of the Act.

(2) The report had been certified in proper form as a true copy and was a public document within the meaning of s 74(a)(iii) of the Evidence Act 1950 and therefore its contents were provable as secondary evidence by means of a certified true copy by virtue of s 65 of the same Act.

**[Bahasa Malaysia summary**

Pemohon telah ditahan di bawah Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta itu') dan telah memohon untuk satu writ habeas corpus. Dua isu sahaja yang dibangkitkan dalam permohonan ini iaitu pertama, sama ada peruntukan di bawah s 3(2)(c) Akta itu telah dilanggar disebabkan fakta bahawa laporan di bawah seksyen tersebut dialamatkan kepada Ketua Polis Negara dan bukan kepada pegawai yang telah dilantik di bawah Akta tersebut. Oleh yang demikian, lebih daripada seorang telah menimbangkan laporan itu dan ini melanggar peruntukan seksyen tersebut. Kedua, sama ada laporan itu boleh diterima sebagai keterangan memandangkan bahawa hanya salinan yang diakui sah dikemukakan sebagai keterangan oleh pegawai yang dilantik itu. Ini adalah kerana pegawai yang menyediakan laporan itu berada di luar negara ketika itu dan tidak dapat mengemukakan laporan itu sendiri.

**Diputuskan**, menolak permohonan ini:

(1) Tafsiran yang tepat untuk s 3(2)(c) Akta itu adalah sama ada pegawai yang dilantik itu telah menerima dan mempertimbangkan laporan itu. Tidak ada apa-apa dalam peruntukan itu yang mencadangkan bahawa laporan itu hendaklah dialamatkan kepada pegawai yang telah dilantik itu sahaja. Adalah menjadi amalan pentadbiran yang lazim dalam sesebuah jabatan kerajaan untuk mengalamatkan surat menyurat kepada ketua jabatan dan bukan kepada pegawai berkenaan. Oleh itu, mahkamah berpuas hati bahawa peruntukan s 3(2)(c) Akta itu telah dipatuhi.

(2) Laporan itu telah disahkan dengan betul dan ia merupakan suatu dokumen awam dalam ertikata s 74(a)(iii) Akta Keterangan 1950 dan oleh yang demikian, kandungannya boleh dikemukakan sebagai keterangan sekunder melalui salinan yang disahkan di bawah s 65 Akta yang sama.]

**Notes**

For cases on preventive detention, see 3 *Mallal's Digest* (4th Ed) paras 595–615 and 686.

**Case referred to**

1 *Lee Choon Yoon v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* (Criminal Appeal No 05–187–90) (unreported) (folld)

**Legislation referred to**

Dangerous Drugs (Special Preventive Measures) Act 1985 s 3(2)(c)

*Karpal Singh* (*Karpal Singh & Co*) for the applicant.
*Mahmud bin Haji Abdullah* (Federal Counsel) for the respondent.

*Cur Adv Vult*

**LC Vohrah J**: This application No 44–32–92 has been heard together with 11 other applications, namely applications No 44–29–92, No 44–30–92, No 44–31–92, No 44–33–92, No 44–39–92, No 44–41–92, No 44–45–92, No 44–49–92, No 44–50–92, No 44–62–92 and No 44–63–92, as it involves two points, one of which is common to all the 12 applications. It has been agreed by all parties that the decision on the common point in this application will be binding on the other 11 applications.

The common point arises out of the construction to be placed on the provisions of s 3(2)(c) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The relevant provisions read as follows:

> 3(1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under subsection (1) of section 6.
>
> (2) And person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under subsection (1) of section 6:
>
> Provided that—
>
> ...
>
> (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.

It has been conceded by Mr Karpal Singh, counsel acting for all the applicants, that in each case the designated officer concerned did receive and apply his mind to the report relating to the circumstances of the arrest and detention prepared by an officer of the required rank as stipulated in s 3(2)(c) but Mr Karpal contends that there has nevertheless been an infringement of its provisions because the report was addressed not to the designated officer per se but to the Inspector-General. The report in each case is in the standard form and for illustration that in this particular application is reproduced below as follows:

Sulit
Lampiran D

Pejabat Ketua Polis
(Cawangan Anti Dadah)
Polis Di Raja Malaysia
Perak Darul Ridzuan
30000 Ipoh.

Rujukan: PK/CAD/FK/44/85
Tarikh: 5 Disember 1989

Ketua Polis Negara
Polis Di Raja Malaysia
Kuala Lumpur.
(u/p: T/PJSJ (CAD))

Laporan Hal Keadaan Penangkapan dan Penahanan di bawah s 3(2)(c) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 (Akta 316)

Bahawasanya saya yang bertandatangan di bawah ini berpuashati bahawa siasatan-siasatan yang perlu ke atas kes terhadap Yeow Boon Kee No Kad Pengenalan 7223662(B) yang telah ditangkap di bawah s 3(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 pada 30 November 1989 jam 1000 hrs di Jalan Kelab, Ipoh, Perak Darul Ridzuan tidak dapat disempurnakan dalam tempoh 14 hari.

Maka, dengan yang demikian, saya dengan ini melaporkan hal keadaan penangkapan dan penahanan orang yang dinyatakan di atas seperti di lampiran A berkembar (yang diperingkatkan 'rahsia') bagi mematuhi kehendak s 3(2)(c) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 bagi tujuan melanjutkan tempoh penahanannya bagi jangkamasa tambahan selama 46 hari lagi mulai jam 1000 hrs pada 14 Disember 1989.

Tarikh: 5 Disember 1989
Masa: 0910 hrs

Tandatangan: tt
Nama penuh: Abd Ghani bin Salleh
Pangkat: TPP
Ibu Pejabat Polis: CAD Ipoh
Sulit

Mr Karpal Singh's complaint is that since the report under the first limb of s 3(2)(c) should have been brought to the attention of either the Inspector-General himself or to a police officer designated by him, the fact that it had been addressed to the Inspector-General for the attention of some officer other than the Inspector-General indicated that more than one mind had been applied to the report and this infringed the said provisions. I find no merit in this complaint. The designated officer in each case has affirmed that he had received the report and had given due consideration to its contents and it was only after that that he submitted his report under the second limb to the Minister. There is nothing in these provisions to suggest that the report must be addressed specifically to the designated officer. It is merely a matter of form that correspondence in government departments is normally addressed to the head of the department and this report conforms with this general administrative practice. In my view, the important question to be determined is whether the designated officer did receive and apply his mind to the report and the answer to this question is positively in the affirmative as conceded by Mr Karpal Singh. I am therefore satisfied that there has been compliance with the provisions of s 3(2)(c) of the Act.

The second point is peculiar only to this application. It concerns the admissibility under the said provisions of a certified true copy of the above report tendered by the designated officer because the reporting officer was away from the country and could not himself depose to the fact that he was the maker of the report. The contention of Mr Karpal Singh is that since the reporting officer was only away in nearby Indonesia, arrangements

could easily have been made to procure his affidavit deposing to the fact that he had reported the circumstances of the arrest and detention to the designated officer and that accordingly the contents of the photostat copy of the report exhibited to the affidavit of the designated officer represented hearsay evidence and were therefore not receivable in evidence. That being the case, argues Mr Karpal Singh, there is a gap in the documentary evidence which has been adduced to show lawful authorization for the applicant's detention under the relevant provisions of s 3 of the Act. There is however no dispute that the report exhibited has been certified in proper form as a true copy of the report made by the reporting officer and in this regard, my attention has been drawn by Encik Mahmud bin Haji Abdullah, federal counsel acting for the respondents, to an unwritten decision of the Supreme Court (coram: Hashim Yeop A Sani CJ (Malaya), Harun Hashim SCJ and LC Vohrah J) in *Lee Choon Yoon v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor*,[1] dealing with a similar point under near identical provisions in s 3(3)(c) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969, wherein it was decided that a report submitted by the designated officer to the Minister under the second limb of the provisions of s 3(3)(c) of the Ordinance was a public document within the meaning of s 74(a)(iii) of the Evidence Act 1950 and that its contents were provable by secondary evidence by means of a certified true copy by virtue of the provisions of s 65 of that Act. By the same token, the certified true copy of the reporting officer's report tendered under the first limb of the said provisions of the Act must be receivable in proof of its contents. There is therefore, in my view, no break in the chain of evidence relating to the authorization for the detention under the relevant provisions.

In the result, all the twelve applications must be dismissed.

*Applications dismissed.*

Reported by Aslam Zainuddin